91-1949

Supreme Court, U.S.
FILED
JUN 3 1992
OFFICE OF THE CLERK

NO.

IN THE

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1991

ROBERT A. LESLIE,
Petitioner

v.

FRANK DARMIENTO, WILLIAM LITTLE
and his attorney of Record,
Mitchel Ezer
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE
CALIFORNIA STATE SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

ROBERT A. Leslie
Consul for petitioner
In Propria Persona
243 Berkeley Avenue
Irvine, Calif. 92715.
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QUESTIONS FOR REVIEW

1. Is perjury and fraud on the part of the presiding judge, issuing a false minute order to plaintiff and to the clerk's transcript, issuing a different false minute order to the court of appeal, preventing an effective appeal, a denial of due process as guaranteed in the Federal Constitution Amendment XIV?

2. Is a judgment based on such a false minute order a proper basis for Res judicata in other proceedings?

3. Do state courts have the authority to ignore statutory law, transferring title when The underlying trust deed is void for want of consideration and because it was not signed, recorded or delivered.

4. Is the refusal of the Presiding Judge to allow an expert witness to testify a trust deed is forged, a denial of Due process guaranteed in amendment XIV of the Federal Constitution?

5. Is the California State Supreme Court bound to its own rulings: It is unlawful to partition community property if the wife's signature is not on the trust deed according to the California State Supreme Court decision of Droeger vs Friedman, Sloan and Ross, SO10494.

PARTIES TO THE PROCEEDING

Honorable Thomas Sutton, Long Beach Municipal Court, 430 West Ocean Blvd. Long Beach California.

Honorable William J. Rylaarsdam Orange County Superior Court, 700 Civic Center Drive West, Santa Ana California, 92701.

Honorable Thomas Thrasher, Orange County Superior Court 700 Civic Center Drive West, Santa Ana California, 92701.

Mitchel Ezer, respondent, 11th Floor 1840 Century Blvd. East Los Angeles, Ca. 90067.

Don Edwin Raney, 3888 Cerritos, Los Alamitos Ca. 90017.

Court of Appeal, 927 Splurgeon St. Santa Ana, California, 92701.

California State Supreme Court, 300 Spring Street, Los Angeles, Ca. 90012.

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GROUNDS FOR JURISDICTION

The Supreme Court of the State of California, meeting In Bank, denied the petition for review, being the highest court in the State of California May 20, 1992. Since this decision is in conflict with the Federal Constitution Amendment XIV, Case Law, Statutory Law and its own opinion this matter is submitted for your review to secure uniformity of decision. The jurisdiction of the Supreme Court to review decisions of the State Courts is codified in 28 USC §1257 which reads as follows: (3)

By writ of certiorari, where the validity of a treaty or statute of the United States is drawn into question or the validity of a state statute is drawn into question on the grounds of it being repugnant to the Constitution, treaties or laws of the United States, or where any title, right privilege, or immunity is specifically set up or claimed under the constitution, treaties or statutes or commission held or authority exercised under the United States.

CONSTITUTIONAL PROVISIONS

Federal Constitution Amendment XIV

Nor shall any state, deprive any person of life, liberty, or property without due process of law, nor to deny any person within its jurisdiction the equal protection of the laws.

STATEMENT OF CASE

In March, 1989 Don Edwin Raney was

sued for malpractice SOC 96683. In April, 1989, Defendant stated he had three trust deeds against house, and initiated foreclosure proceedings. Plaintiff filed action stating trust deeds were forged, and obtained a restraining order, which was ordered dissolved by the presiding judge pursuant to the "code of silence" and plaintiff's expert was not allowed to testify. The malpractice suit was repeatedly demurred pursuant to the" code of silence" and appealed to the court of appeal, when after seven attempts, it was demurred without leave to amend. This demurrer was overruled by the court of appeal.

Meanwhile, our home was sold at auction September 1989 to Frank Darmiento and William Little, who entered a partition action, judgment for partition being entered October 25, 1990, plaintiff's

expert not being allowed to testify that the underlying trust deeds were forged. In this judgment the presiding judge entered a false minute order stating, "The court's minute order indicates that point was resolved against him because he refused to present any admissible evidence, including his own testimony, or the report of his handwriting expert, which would establish that his signature was counterfeit."

The petitioner received a different minute order stating," The above matter having been taken into submission the court now makes its ruling as follows:

The court finds for the plaintiff and against the defendants for the first two causes of action. Plaintiff made out a prima facie case with respect to these causes of action, and defendant offered no admissible evidence to support

his contention that his signature on the fourth trust deed was a signature (sic). Dr. Leslie's failure to offer his own testimony to this effect was noted by the court." Petition for rehearing was made on this basis, which was denied. This denial was appealed to the State supreme court, upholding the opinion of the court of appeal.

When Judge Sutton's decision was reversed, on appeal, the matter was resubmitted to the court of appeal because of that decision and the Opinion of the California State Supreme Court of Droeger, Friedman Sloan and Ross June 29, 1991. The court of appeal reaffirmed its judgment, which was appealed to the state supreme court, affirming this judgment, May 20, 1992. The Federal question was introduced in 1989 when the restraining order was

dissolved.

ARGUMENT

By issuing a false minute order, Judge Rylaarsdam deceived petitioner as to the issues at bar in the case, not putting him at notice of the necessity of obtaining a reporter's transcript. This deception was not discovered until the opinion of the court of appeal issued, and although the matter was called to their attention, the court of appeal and State supreme court denied petitioner relief.

This conflicts with the U. S Supreme Court decision of the United States v Throckmortin 98 U. S. 61,65 (25L ED 93). HELD: relief will be granted in cases which, " reason of something done by the successful party to the suit, there was in fact no adversary trial or decision on the issues of the case.

When the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent."

The affirmation was also based on the perjured declarations of the Honorable judges W. J. Rylaarsdam and Thomas Sutton of the Superior Court and Don Edwin Raney who were following the "code of Silence."

Page 3 of the decision of the Court of Appeal filed May 14, 1991, footnote 1 states," Leslie also sued Raney in the Los Angeles Superior Court (SOC96683). The complaint was apparently for legal malpractice, although the court weighing a demurrer for to the seventh amended complaint noted it was "so muddled and such jibberish (SIC) as to border on being intelligible." This perjured declaration was made on

the basis of the" code of silence" in the legal profession and the Court of Appeal in Los Angeles reversed, September 17, 1991, Case No. BO50748. A summary judgment motion before the Long Beach Superior Court was denied on the basis that a trial was necessary to determine the extent of the damages.

Page 5 of the May 14 decision states," The court's minute order indicates that point was resolved against him because he refused to present any admissible evidence, including his own testimony, or the report of his handwriting expert, which would establish that his signature was counterfeit. With that record, he raised no issue here." This statement is false, and was not made in the minute order sent to petitioner or in the clerk's transcript. Page 5 of the reporter's transcript states on line

17," I wish to offer the evidence of my document examiner." "Is he here." "No, the written report is here. It is in the file I gave you." This excerpt from the reporters transcript shows Judge Rylaarsdam was given the document examiners report. Page 6 and 7 of this same transcript will show appellant was not invited to testify as indicated in the minute order. It should also be noted, Judge Rylaarsdam refused to allow the document examiner to testify in the hearing for reconsideration.

Don Edwin Raney perjured himself when he states that appellant owed him $48,000 in unpaid legal fees, when he later admitted the amount in dispute is on third of this, in an arbitration proceeding taken before the Los Angeles County Bar Association, which fact was submitted in errata in Closing brief,

GO 11586. Pursuant to this the malpractice suit, SOC 96683, has been amended in the Long Beach Superior Court to recover this money. Even this amount is in dispute, because the billings revealed $25,000 for pretrial preparation, and petitioner's file released by order of the State Bar April 16, 1991, showed absolutely no information in the attorney's work product.

The principal is well established in case law that appellate courts will change their decision after the remittiter is filed in the court below if their judgment is based on false information: In Rowland v Kreyenhagen 24 Cal 52 the court stated as a general rule this court cannot exercise any jurisdiction over a case in which a remittitur has been issued, say as

follows, "but this general rule rests on the supposition that all the proceedings have been regular, that no fraud or imposition has been practiced on the court or the opposite party. Against an order of judgment improvidently granted, upon a false suggestion, or upon a mistake as to the facts of the case, this court will afford relief after the adjournment of the term; and will, if necessary, recall a remittitur and stay proceedings in the court below. This is not done, however, upon the principal of assumption of jurisdiction, but upon the ground the jurisdiction of the court cannot be divested by an irregular or improvident order. In contemplation of law, an order obtained upon a false suggestion is not the order of the court, and may be treated as a nullity. If

under color of such an order, the proceedings have in part found their way back to the court below, yet in law are considered as still pending in the appellate court, and the court may take such steps as may be necessary to make the fact and the law agree." See also McClearan v Superior Court (1955) 45 C2d 852; Davis v Basalt Rock Company 114 CA2d. 302; Isenberg v Sherman 214 Cal. 726; Hanson v McCue 43 Cal 178; Bernal v Wade, 46 Cal 640; Holloway v Galliac, 49 Cal 149; People v McDermott 97 Cal 249 etc.

Reviews by the court of appeal was denied on the grounds that the court had no authority to recall a remittitur once it had been issued. The matter was appealed to the California State Supreme Court which denied the petition for review.

In addition, notwithstanding this fact, the issue of the forgery was declared res judicata an case 620058 to 605416, the expert again not being allowed to testify.

It is unlawful to partition community property if the wife's signature is not on the trust deed according to the California State Supreme Court decision of Droeger vs Friedman, Sloan and Ross, SO10494, issued July 29, 1991. This fact notwithstanding, judgment was affirmed by the California State Supreme Court.

The underlying trust deed is forged and the judge refused to allow the document examiner testify, a violation of Due Process. (Federal Constitution Amendment XIV)

Exclusion of admissible expert testimony may be reversible error.

In Lunghi v. Clark Equipment Company (1984), 153 CA3d 485,490, an action was brought for wrongful death based on an alleged design defect in a machine. Plaintiff's and defendants experts disagreed on this point. Plaintiff's proposed to introduce favorable evidence from a third expert whose deposition had been taken. (defendants expert) The judge refused to call him and the court of appeals reversed.

In Loftledir Icelandic Airlines v McConnell Douglas plaintiff sought to introduce testimony from an expert of the NTSB and was prevented from doing so. Reversed, expert not so employed when he testified.

A fair hearing is a requisite of due process in both civil and criminal cases; hence its denial is an act in excess of jurisdiction. (See jurisdiction

§234 and seq.) and is reversible error per se. The following are examples:

A. Striking out proper pleadings. People v Lagiss (1958) 160 CA2d 28,32. Jurisdiction §240.

B. Denial of a party's right to testify or to offer evidence. Guardianship of Waite (1939) 14C2d 727,729. Shippey v Shippey (1943) 58 CA2d 174,175; Fewel v Fewel 23C2d 431,433; National Auto. Insurance Co v Fraties (1941) 46 CA2d 431,434; Estate of Buchman (1954) 123 CA2d 546,559, Jurisdiction §241. Caldwell v Caldwell (1962) 204 CA2d 819,821.

A judgment entered on the erroneous granting of a motion for summary judgment is clearly reversible error per se; since no trial was held, the error constitutes a denial of a fair hearing: Callahan v Chatsworth Park (1962) 204 CA2d 597,610; Dvorin v Appellate Dept. (1975) 15C 3d 648,651. Proceedings without trial §308.

Exclusion of admissible evidence on material issue is reversible error: California Home Extension Assn. v Hilbortn (1951) 37C2d 459,465; Bole v Bole (1946) CA2d 344, 346 (child not allowed to testify); Schubkegel v Gordino 56 CA2d 667,673. (Malicious prosecution without evidence of malice); Mashbir v Mashbir (1938) 29CA2d 733,734; Longuy v La Society Francaise (1921) 52 CA 370,376; Reyedmeyer v Cunningham (1923) 61 CA 423,433,437. Gleeson v Dunn (1931)

113 CA 347,351; Aldabe v Aldabe (1962) 209 CA2d 453, 457, 477; Clifton v Ulis (1976) 17C 3d 99,105.

The underlying trust deed is void for want of consideration and because it was not signed, recorded or delivered.

The trust deed was acknowledged by Don Edwin Raney, the trustor, contrary to Government Code 8224, rendering the trust deed incapable of imparting constructive notice to third parties. The trust deed was then transferred to Ticor Corporation, contrary to this statute, and CC 2932.5, and 2924b which states," provided the estate or interest of any person entitled to receive notice under this subdivision is acquired by an instrument sufficient to impart constructive notice of the estate . . . and provided the instrument is recorded in the office of the county

recorder so as to impart constructive notice prior to the recording date of the notice of default." No constructive notice was given because the trustor acknowledged his own forged trust deed, G8224.

" Where exchange contract was not recorded, wife was not barred from preventing exchange of community property by this section, filing of complaint and lis pendens in action for specific performance of such agreement cannot be recognized as substitute for recording contract as beginning point of time of limitation," Waldeck v Hedden (1928) 89 CA 485.

Byrd v Blanton 149 Cal App 3d 987 at 982 HELD: "The one year statute of limitations contained in Section CC 5127 is not a bar when as here the transfer takes place without the

knowledge or consent of the nonsigning spouse and the transferee has knowledge of the marital relationship. Provision for avoidance of conveyances executed without wife's consent are for protection of third persons who may rely on recorded instruments. Schindler v Schindler (1954) 126 CA2d 597.

" Contract to Sell community real property seeking partial specific performance as to the husband's one-half interest, or alternatively, damages, the trial court properly entered judgment in favor of defendants, striking any reference in the amended complaint to specific performance expulging the lis-pendens on the property and concluding the plaintiff could not recover damages from the husband, where the contract was not signed by the wife, and the husband did not represent himself

to be the agent for his wife nor was any such agency implied." Andrade Development Co. v Martin 138 Cal App 3d 330. See also Lee vs Murphy 119 C 364, Middlecroft v Hemstreet 135 C 173. The trust deed was not delivered because it was forged. There is failure of consideration because no legal services were provided.

If this decision is allowed to stand, it demonstrates that one judge can by issuing a false minute order, frustrate the entire appellate process, which is contrary to public policy, a denial of due process guaranteed in Amendment XIV, and the principle of appellate review.

CONCLUSION

For the reasons mentioned and the cases cited petitioner respectfully requests a review of this decision.

I, Robert A. Leslie, am the appellant and have prepared this petition for Writ of Certiorari. The information contained herein is true of my own personal knowledge. I declare under penalty of perjury the foregoing is correct.

Executed June 1, 1992 at Irvine, California.

Robert A. Leslie

In pro per

APPENDIX

Fourth Appellate District, Division Three No. GO11586 IN THE SUPREME COURT OF THE STATE OF CALIFORNIA IN BANK. Appellants petition for review denied 5/20/92.

OPINION IN THE COURT OF APPEAL GO11028 filed March 27, 1992, X605416, Appeal from the order of the Superior Court of Orange County, William Rylaarsdam, Judge. Appeal dismissed.

On March 16, 1992 apparently in response to our order, we received a document from Leslie entitled," Motion for recalling remittitur." The opinion in this case had not been filed on that date; and the remittitur, of course had not issued. The arguments, however, were directed to several of Leslie's previous appeals (Darmiento v. Leslie (May 14, 1991, GO10296, GOO9651)) but

the opinion in these matters is long since final, and this court has no jurisdiction to change it.

OPINION IN THE COURT OF APPEAL GO11586 filed March 12, 1992. Leslie v Darmiento Appeal from the judgments of the Orange County Superior Court, Thomas M. Thrasher, Judge. Affirmed.

This appeal is the latest in an ongoing legal saga. The underlying facts are documented in our now-final unpublished decision (Darmiento v Leslie (May 14)1991 GO10296, GOO9651. and we will not repeat them.

After we issued our earlier opinion, the superior court concluded this lawsuit was a replay of the one lost by Leslie and res judicata principles necessitated judgment for defendants as a matter of law. This decision was correct. (7 Witkin, Cal. Procedure (3rd Edition

1985) Judgment §249, p. 687.)

Defendants seek sanctions for a frivolous appeal, and they are certainly warranted Leslie's opening brief, is essentially identical to two others he has filed in other appeals he is currently prosecuting in this court (Darmiento v Leslie GO11028; Leslie v Raney GO11612) relates solely to issues which were resolved against him in our earlier decision. No reasonable attorney could conclude this appeal had any merit. Defendants are entitled to sanctions in the amount of $500 for a frivolous appeal. Judgment affirmed Respondents shall recover costs.

Crosby Acting P. J. Wallin, J. Moore J.

PETITION FOR REVIEW DENIED BY THE CALIFORNIA STATE SUPREME COURT AUGUST 14, 1991, SO21565.

PETITION FOR REHEARING DENIED IN THE COURT OF APPEAL May 29, 1991, GO10296. OPINION OF THE COURT OF APPEAL FOURTH APPELLATE DISTRICT DIVISION III FILED MAY 14, 1991. GO10296 GO09651.

Appeals from the judgment of the Superior Court of Orange County, Thomas N. Thrasher and William F. Rylaarsdam Judges.

Frank Darmiento and William Little purchased an undivided one-half interest in Robert Leslie's Laguna Beach home at a foreclosure sale September 29, 1989, and became tenants in common with Leslie's wife, the owner of the other one-half. Leslie unsuccessfully challenged the foreclosure sale. Darmiento and Little successfully sued to quiet title and to partition and sell the property. We find no error

and award sanctions for a frivolous appeal. (GO09651).

I

As best we can discern from the briefs and clerk's transcript, Leslie was represented is several criminal and civil actions by attorney Don Raney. He allegedly gave Raney several promissory notes, secured by separate trust deeds on the house he shared as tenant in common with his wife. Leslie defaulted on a $20,342 note, and Raney opted to exercise the power of sale contained in the most junior lien.

Darmiento and Little purchased Leslie's interest at the trustee's sale for $71,100, subject to three senior liens. They sued the Leslie's to quiet title, to force a sale of the property, and for ejectment (605416). There is no record that Mrs. Leslie ever made

an appearance in this action. Leslie's response was to file his own complaint against Raney, Darmiento, Little and their own attorney for fraud, recession and money had and received (620058)[1].

[1] Leslie also sued Raney in Los Angeles Superior Court (SO 96683). The complaint was apparently for legal malpractice, although the court weighing a demurrer to the seventh amended complaint noted it was," so muddled and such jibberish [sic] as to border on being intelligible.

Leslie moved to set aside the trustee's sale on that action as well. According to the clerks office, the superior court's records show the cause was dismissed in May 1990. Actually, the Court of Appeal reversed, and this action is now before the superior court. (BO50748).

Leslie noticed virtually identical motions in each lawsuit to set aside the foreclosure sale, urging Raney forged the promissory notes and trust deed.

The motions were denied.[2] The action prosecuted by Darmiento and Little proceeded to trial, and the court quieted title in plaintiffs and ordered the property sold. Judgment was in Leslie's favor in the action for ejectment.

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[2] As an aside, it should be noted that we denied Leslie's petition for injunctive relief to prevent the partition sale scheduled for March 27, 1991 (G010707). The Supreme Court denied review of that order (S020057).

Despite Leslie's protestations to the contrary, no final judgment has been entered on the action he is prosecuting. Just several months ago the superior court stayed proceedings on that matter pending those appeals. We consolidated the two appeals on our own motion. As the order denying Leslie's motion is not independently appealable the motion must be dismissed. CCP §904.1; see e.g. Jasper Constr.,

Inc. v. University Casework Systems Inc. (1974) 39 Cal. App 3d. 582,585.)

We agree the appeal is frivolous and order sanctions (see part V). We find no error in GO10296 and affirm the judgment.

II

Leslie raises numerous contentions in GO10296, primarily relating to the forgery of the trust deed, and alleged lack of consideration for the notes. He failed to request a statement of decision however; and in its absence," a judgment or order of the lower court is presumed correct. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. This is not only a general principal of appellate practice but an ingredient of the constitutional

doctrine of reversible error." 9 Witkin Cal Procedure.(3rd edition 1985) appeal §268, p 276. See also in re Marriage of Arcenedaux (1990) 51 Cal.3d 1133.

Leslie's reliance on the clerks transcript alone forecloses other avenues of review.[3] "On a clerk's transcript

[3] A reporters transcript was produced in a motion for reconsideration filed on May 29, 1991. This motion was denied and appealed to the State Supreme Court which denied a petition for review.

Appeal the appellate court must conclusively presume that the evidence is ample to sustain the findings, and the only questions presented are the sufficiency of the pleadings and whether the findings support the judgment." (1946) Knompf v Morrison 73 Cal app.2d. 284,286; see also Cal rules of Court, rule 52. In fact, the clerks transcript is particularly damaging to Leslie on the issue of the alleged forgery. The

court's minute order indicates that point was resolved against him because he refused to present any admissible evidence, including his own testimony or the report of his handwriting expert, that would establish that his signature was counterfeit. With that record he raised no issue here.

III

Citing code of Civil Procedure procedure 872.210, subdivision b Leslie contends the partition action was prohibited. That section provides, "an action between spouses or putative spouses for partition of their community or quasi-community property, nor their quasi interest in property may not be commenced or maintained under this title." Neither Darmiento or Little is married to Mrs. Leslie, however and the property was held between the spouses

as tenants in common. Section 872.210, subdivision (b) thus had no conceivable application in this matter.

Whether civil code section §5127, which generally prevents one spouse from giving a binding encumbrance on community real property, has any application to this case is not before us. As mentioned above, there is no indication that Frau Leslie ever appeared in this action and no evidence that this was community property

Leslie did not include his answer in the appellate record, and we have no way of knowing if section §5127 was raised as an affirmative defense. After the trial in this case, Leslie's spouse sued Raney, X642725, to cancel the deed on the basis it was delivered without her knowledge or consent. The status of that lawsuit is unknown to us.[4]

[4] section 5110 of the civil code makes clear: when property "is acquired by husband and wife by an instrument in which they are described as husband and wife, the presumption in the absence of a different intention expressed, is that the property is community." Re Marriage of Cadematori (1981) 119 C.A.3d 970, 975,976; Adams and Sevitch, §E.42 et. seq. Witkin Community property §101. This fact was mentioned in the appellate briefs.

IV

Leslie also argues that Raney was an indispensable part of the action filed by Darmiento and Little. CCP 389. Not so. He may have been a material witness, but his absence from the Darmiento and Little Lawsuit did not preclude relief from the parties or potentially impair Leslie's rights because Raney had no interest in the property after the trustee's sale.

Leslie also complains that discovery was not completed by the time of the trial. But nothing ever indicates the parties ever conducted any discovery

or wished to do so. Nor is there any record of an objection at the beginning of the trial. It is too late to launch this attack. "It is generally considered unfair to the trial court and the adverse party to consider procedural defects that could have been raised below but were not."5 Meneffe v county of Fresno 163 Cal app 3d 1175,1182.

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5 Plaintiff had no knowledge of Judge Rylaarsdam's perjured minute order, which did not comport with the minute order received by petitioner, until receiving it one week after the decision of the court of appeal was published. A petition for reconsideration and a reporters transcript was filed with the court of appeal 10 days later. The petition for reconsideration was denied. This was appealed to the State supreme court and petition for review denied.

Darmiento, Little and Ezer request sanctions in G0 09651. CCP §907. The order is patently nonappeallable and no reasonable attorney could conclude otherwise. The notice of ruling for the June 7 order denying Leslie's motion incorrectly indicated it was with prejudice. This fact was immaterial; the denial was nonappealable nevertheless. We presume that is one reason the trial court waited eight months after the notice of appeal was filed before formerly suspending proceedings.

Sanctions are clearly appropriate, although the appeal should not have been costly to Leslie's adversaries. Darmiento, Little and Ezer could have moved to dismiss at the outset when they were served with the notice of appeal and before they incurred the

expense of filing a brief. In short, while sanctions are deserved, Leslie's frivolous purported appeal should not have cost Leslie's adversaries much.

The appeal in G009651 is dismissed and respondents are awarded sanctions in the amount of $500. The judgment in GO10296 is affirmed. Respondents are entitled to costs in both matters.

Crosby, Sills, Moore.

California State Supreme Court decision of Droeger vs Friedman, Sloan and Ross, SO10494. issued July 29, 1991.

A husband brought an action against the attorneys representing his wife in a dissolution proceedings seeking to quiet title to community property subject to a deed of trust that had been executed by his wife to secure payment of her attorneys fees and costs, without her husbands consent. The trial

court sustained her attorneys' demurrer without leave to amend and entered a judgment of dismissal. The court of appeal reversed and the Supreme Court affirmed the judgment of the court of appeal. It held CC§5127 required that both spouses consent to any encumbrance on the community real property, and thus the husband was entitled to void the transaction in its entirety. It also determined this decision was to be applied retroactively, since it merely resolved a conflict in the appellate courts.

MINUTE ORDER OF WILLIAM RYLAARSDAM dated September 25, to the court of appeal.

In fact, the clerks transcript is particularly damaging to Leslie on the issue of the alleged forgery. The

court's minute order indicates that point was resolved against him because he refused to present any admissible evidence, including his own testimony or the report of his handwriting expert, that would establish that his signature was counterfeit. With that record he raised no issue here.

MINUTE ORDER OF SEPTEMBER 25, 1990 as appears in the clerk's transcript:

The above matter having been taken into submission the court now makes its ruling as follows:

The court finds for the plaintiff and against the defendants for the first two causes of action. Plaintiff made out a prima facie case with respect to these causes of action, and defendant offered no admissible evidence to support his contention that his signature on the fourth trust deed was a signature

was a forgery.

MINUTE ORDER OF WILLIAM RYLAARSDAM dated September 25, 1990 MAILED TO MY HOME.

The above matter having been taken into submission the court now makes its ruling as follows:

The court finds for the plaintiff and against the defendants for the first two causes of action. Plaintiff made out a prima facie case with respect to these causes of action, and defendant offered no admissible evidence to support his contention that his signature on the fourth trust deed was a signature (sic). Dr. Leslie's failure to offer his own testimony to this effect was noted by the court.

OPINION OF THE COURT OF APPEAL BO50748, SOC96683.

SEPTEMBER 17, 1991

Leslie v Don Raney BO50748 (SOC96683) Appeal from the Judgment of the Superior Court in Los Angeles County. James H. Sutton, Judge. Affirmed in part and reversed in part with directions. Case reasonable care and skill in performing legal services for plaintiff as follows: Raney failed to file for a directed verdict of acquittal on the basis of violation of Leslie's right to receive a trial within 60 days of his arraignment; Raney made no attempt to obtain informant's identity and lied to Leslie that this could not be done; Raney refused to call witnesses who had strong evidence of Leslie's innocence to testify on Leslie's behalf at trial; Raney knew from interviewing one witness

that Marilyn Arreola "was selling forged prescriptions and covering the issuance of these prescriptions by forged chart entries"; Raney failed to make a motion to suppress under penal code section 1538.5; Raney refused to raise the issue of his failure to move to suppress evidence in the engrossed statement on appeal; Raney's failure to move to suppress, which would have prevented the conviction is gross negligence, and Raney's "malicious refusal to raise the issue (of his gross negligence) in the engrossed statement of appeal, or in the two appeals, made it impossible to raise the issue in postconviction habeus corpus proceedings, requiring appeals to the Federal Courts to have this issue considered."[1] Although Raney

1. This case is now before your court No. 91-1708.

was aware that there was perjured testimony at the trial and at the sentencing hearing, Raney failed to file a motion to strike the perjured testimony or to raise this issue on appeal; aside from the perjured testimony there was no other evidence against plaintiff.

Plaintiff also alleges that other reversible errors occurred, which errors could not be considered by the appellate court because they were not mentioned in the engrossed statement of appeal; Raney lied to Leslie that the appellate court overlooked these reversible errors.

MINUTE ORDER OF JAMES M. SUTTON March 22, 1990.

If there had been a judicial foreclosure sale a motion to set it aside may have some merit. Here, however, there was a private trustee's

sale which was never a judicial PROCEEDING AND A "motion to set it aside" will not lie and is wholly inappropriate. A separate action must be commenced in Orange county and the purchasers at the trustee's sale would be indispensable parties to that action. Denied with prejudice.

Demurrer (7th amended) The court notes Judge Nott's observation in Nov of '89 that this ought to be plaintiff's last attempt at stating a c/a(s) and this court agrees. What is presented as a complaint is so muddled and such jibberish as to border on being intelligible.